

REMARKS/ARGUMENTS

The listing of the claims are presented above. Claims 1, 6, 10, 13, 16, 20-21, 23-24, 27-29, and 31-43 are currently pending in the application. Claims 2-5, 7-9, 11, 12, 14, 15, 17-19, 22, 25, 26, and 30 are canceled. Claims 20 and 21 have been withdrawn from prosecution. Claims 1, 13, 16, 29, 31, 35, 37, 38 and 39 are currently amended. Claims 1, 13 and 16 are amended to incorporate claims 3, 14, and 26 respectively. Claims 35, 37, 38 and 39 are amended to more precisely recite the subject matter considered to be the invention. Basis for the amendments to the claims is present in the specification and therefore no new matter is added by these amendments. Entry of the amendments to the claims, and consideration of the remarks presented herein is respectfully requested.

Double Patenting Objection

Claim 40 is objected to under 37 CFR § 1.75 as being a substantial duplicate of claim 33. This rejection is respectfully traversed. Applicants respectfully point out that claim 33 recites a DNA molecule whereas claim 40 recites a polypeptide molecule. Applicants maintain that these two claims do not recite the same or substantially the same subject matter and request clarification of the objection to claim 40 on this basis.

Rejections under 35 U.S.C. § 112

Applicants appreciate the withdrawal of the previous rejection of claims 3, 7, 11, 14 and 26 on the basis of 35 U.S.C. § 112, first paragraph, written description requirement.

Claim 31, 32 and 34 are rejected on the basis of 35 U.S.C. § 112, second paragraph as indefinite. This rejection has been addressed by amending claim 31 as recommended by the Examiner, amending “fragments” to recite “a fragment”. Therefore, withdrawal of the rejection of claims 31, 32 and 34 on the basis of 35 U.S.C. § 112, first paragraph is respectfully requested.

Rejections on the Basis of 35 U.S.C. § 102(e)

Claims 3, 7, 11, 14, 22-28, 31-32, and 39 to 43 remain rejected on the basis of 35 U.S.C. § 102(e) over Yu et al, U.S. Patent 6,153,402 ('402 patent). This rejection is respectfully traversed.

Applicants first point out that the subject matter of claim 3, 7, 11, 14, and 26 has now been written into claims 1, 6, 10, 13, and 16 respectively. In addition, to expedite prosecution of these claims, claims 1, 13, and 16 have been amended to recite proteins comprising an amino acid sequence that is at least about 99% identical to amino acids 1 through 417 of SEQ ID NO: 2.

Examiner has stated that the Yu et al. patent '402 discloses nucleic acids and polypeptides 90% identical to the "functional protein". Applicants point out that the priority document of '402, provisional application 60/013,285 filed March 12, 1996, does not disclose SEQ ID NO: 1 or 2 of the present application or any DNA or polypeptide having greater than 97.5% identity to SEQ ID NO: 1 or 2. For purposes of expediting prosecution, Applicants have amended the claims to recite proteins comprising an amino acid sequence at least 99% identical to SEQ ID NO: 2. Therefore, since the provisional application does not disclose the "functional protein", i.e., SEQ ID NO: 2, it cannot disclose polypeptides 90% identical to the functional protein. Applicants submit that the claims 1, 6, 10, 13, 16, 23, 24, 27, 29, 31 and 32 recite polypeptide and DNA sequences not disclosed in the March 12, 1996 priority document. For example, isolated polypeptides recited in claims 23 and 31, and DNA encoding them are not described in the '402 priority document, since these sequences are not identical to the sequences of DR3-VI. Therefore, Applicants request reconsideration and withdrawal of the rejection of these claim on the basis of 35 U.S.C. §102(e) as anticipated by the '402 patent.

Furthermore, Applicants point out that SEQ ID NO: 5 and 6, murine sequences, are not described in the '402 patent at al. The murine AIR polypeptide, SEQ ID NO: 6 has about 65% identity to human AIR polypeptide, SEQ ID NO: 2. Therefore, Applicant respectfully points out that all claims directed to SEQ ID NO: 5 and 6, or sequences having 70% identity to SEQ ID NO: 6, are not disclosed in the '402 patent. Therefore,

Applicants respectfully request reconsideration and withdrawal of the 102(e) rejection of claims 39 and 43 as anticipated by the '402 patent.

Claims 1, 3, 6, 7, 10, 11, 13-14, 16 and 22-32, 39 and 43 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent 6,462,176 and US Patent Application Publication US2002/0192729A1 (Ashkenazi-1 and -2). This rejection is respectfully traversed. Applicants wish to point out that Ashkenazi-1 and -2 also do not disclose SEQ ID NO: 5 and 6 of the present invention, nor sequences which are 70% or greater than SEQ ID NO: 6, nor polynucleotide sequence which encode SEQ ID NO: 6 or amino acid sequences 70% or more identical. Therefore, Applicants request the reconsideration and withdrawal of the rejection of claims 39 and 43 on the basis of 35 U.S.C. § 102(e) as anticipated by the Ashkenazi references.

Applicants wish to defer consideration of an interference on the remaining claims until the Examiner has considered amendments and arguments presented above on the other grounds for rejection.


CONCLUSION

Entry of the amendments to the claims is respectfully requested. On the basis of the amendments to the claims, and the arguments presented above, Applicants respectfully request reconsideration and withdrawn of the current rejections.

Applicants' attorney invites the Examiner to call her at the number below if it would be helpful in advancing the prosecution of this application.

Immunex Corporation
1201 Amgen Court West
Seattle, Washington 98119-3105
Telephone: (206) 265-7000

Respectfully submitted,


Christine M. Bellas
Attorney for Applicant
Registration No. 34,122